



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	7/15/03	Bill No:	AB 1744
Tax:	Property Diesel Fuel	Author:	Assembly Revenue and Taxation Committee
Board Position:		Related Bills:	

BILL SUMMARY

This bill would:

- Change the date for a property owner that is eligible for specified exemptions to file an exemption claim on new purchases of property, from prior to the next January 1 to within 90 days after acquisition (or February 15 of the following calendar year, whichever occurs earlier for property acquired in November or December). *§75.21, §271*
- Related to information about new construction from owner-builders and owner-developers that sold or built the property:
- Clarify that they are required to provide information related to the new construction to the assessor. *§441*
- Require that information including the total consideration provided by the purchaser for the property be provided upon written request. *§441*
- Require property owners that lease property to list those items on their property statement when the lease is actually a conditional sales contract (i.e., the lessee can acquire ownership of the property at the end of the lease for a nominal amount). *§442*
- Codify provisions of the Board's Diesel Fuel Tax Regulation relating to the use of an original invoice retained in an alternative storage media to support a diesel fuel tax claim for refund. *§60501*

Summary of Amendments

Since the previous analysis, this bill was amended to delete the provision that would have required the State Board of Equalization to make and publish an estimate of the fiscal impact resulting from any Board action, including changes to Assessors' Handbooks, Letters to Assessors, or Board-prescribed forms. *Government Code §15606*

In addition, the bill was amended to allow a claimant that has filed a timely diesel fuel tax claim for refund to support the claim by the original invoice facsimile retained in an alternative storage media showing the purchase. *Revenue and Taxation Code §60501*

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ANALYSIS**Exemption Claims– New Property Acquisitions**
*Revenue and Taxation Code §75.21, §271***Current Law**

Revenue and Taxation Code Section 271 allows for the cancellation or refund of taxes on properties on the regular roll that are acquired by various exempt organizations after the lien date (January 1) but prior to the beginning of the fiscal year (July 1). It allows for a similar cancellation or refund of taxes for organizations that do not come into existence until after the lien date and thereafter acquired properties before the beginning of the fiscal year.

For organizations that acquire properties after the fiscal year begins (on or after July 1), the taxes for that fiscal year are either canceled or refunded in pro-ratio to the number of days in the fiscal year that the property was owned by the organization. To receive the cancellation, refund, or proration, an application for the exemption must be filed “on or before the lien date in the calendar year next succeeding the calendar year in which the property was acquired.” Basically, this means that for any property acquired between January 2, 2002, and December 31, 2002, an exemption claim for the property must be filed on or before January 1, 2003. However, if an organization does not file a claim within this time period but files an exemption claim afterwards, the maximum tax on the property will not exceed \$250.

Proposed Law

This bill would amend Revenue and Taxation Code Section 271 to instead provide that the exemption claim must be filed “within 90 days from the first day of the month following the month in which the property was acquired or by February 15 of the following calendar year, whichever occurs earlier.” In addition, this bill would make a conforming amendment to Section 75.21 to provide that, for new acquisitions of property in certain instances, a separate exemption claim for the supplemental roll is not required. Instead, the claim filed for the regular roll pursuant to Section 271 will also apply to the supplemental roll.

Comments

1. **Purpose.** If an organization acquires property near the end of the calendar year (for example, a donation of property to the organization recorded on December 31, 2002) there may be insufficient time to complete and file a claim by the next lien date (i.e., January 1, 2003). This amendment would instead give organizations a uniform 90 days after acquiring properties (or until the following February 15 for November and December acquisitions) to file a claim for the refund, cancellation, or pro-ratio of taxes on the regular roll. This gives more time to file a claim form for property acquired in the last three months of the year, but less time to file a claim for property acquired in the first nine months of the year. The transition from “end of year” to “90 days” could result in some late filings from nonprofits not aware of the change in the first few years. However, if this occurred, at most \$250 in tax would be owed. This bill also makes conforming technical amendments to Section 75.21(f)(1) which provides that a separate claim for the supplemental roll is not required to be filed

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when an organization that is already receiving an exemption on other property acquires a new property (because the annual claim filed for the upcoming assessment year will include the new property acquisition). Instead, the claim filed pursuant to Section 271 on a new acquisition would suffice for both the regular and supplemental rolls.

2. **Amendments.** The June 18, 2003 amendments make technical amendments to Section 75.21.

Information Requests - New Construction *Revenue and Taxation Code Section 441*

Current Law

Section 441(d) of the Revenue and Taxation Code requires that taxpayers make available for examination information or records regarding their property to the assessor that are required by the assessor for assessment purposes. The law specifies that details of property acquisition transactions, construction and development costs, rental income, and other data relevant to the determination of an estimate of value are information essential to the proper discharge of the assessor's duties.

Proposed Law

This bill would add subparagraph (2) to subdivision (d) of Section 441 of the Revenue and Taxation Code to provide that these provisions apply to an owner-builder or an owner-developer of new construction that is sold to a third party, is constructed on behalf of a third party, or is constructed for the purpose of selling that property to a third party.

In addition, it would require that the owner-builder or owner-developer of new construction provide the assessor with information and records regarding that property within 45 days of receipt of a written request by the assessor. It specifies that information and records requested include the total consideration provided by the purchaser or on behalf of the purchaser that was paid or provided either, as part of or outside of the purchase agreement, including, but not limited to, consideration paid or provided for the purchase or acquisition of upgrades, additions, or any other additional or supplemental work performed or arranged for by the owner-builder or owner-developer on behalf of the purchaser.

Comments

1. **Sponsor.** This provision is sponsored by San Diego County. Its purpose is to counteract a trend by some homebuyers of new homes to not report the total purchase price paid for the home to establish a lower assessed value for property tax purposes. Some of these homebuyers are unaware that they are required to report the total consideration paid for the property.
2. **Failure to Report Total Purchase Price.** It has been reported that some sales agents of homes in new home subdivisions have suggested to prospective buyers that they could pay for additional upgrades and options on the home with cash and then not report the cost of these upgrades and options to the county assessor. For example, a home buyer who purchases a home with a base price of \$350,000 could

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select \$25,000 in upgraded kitchen and flooring options and pay for these items with cash. In the change of ownership statement to the assessor, a purchase price of \$350,000 rather than \$375,000 is reported. Thereby "saving" \$250 per year in taxes if these options and upgrades are not discovered. Homebuyers who finance the options and upgrades are unable to conceal the true price paid for the home since the down payment and the financing is reported on the change of ownership statement. In addition to potentially reducing the amount of property taxes paid, this practice reduces the documentary transfer taxes charged when the deed is recorded with the county recorder.

3. **Assessors have had difficulties obtaining information from some subdivision homebuilders and developers who will not provide information about a property after the sale has been completed.** In completing the building records detailing the property characteristics of property in subdivisions, where the floor plans and features are variable but within a known range, the county assessor will often obtain information from the developers to minimize the intrusion to the new home buyer and reduce the administrative costs by collecting the information from a central source. However, some home builders and developers claim that Section 441 does not apply to them since they are no longer the owner of the property, and they therefore are not required by law to provide the assessor with any information about the property. Instead, they state that the assessor should contact the new buyer to obtain details on the property. This bill would state that such information is required to be disclosed by the builder or developer after the sale.

Leased Property

Revenue and Taxation Code Section 442

Current Law

Existing property tax law requires the owners of specified property interests, including property that is the subject of a lease, to file a property statement with the county assessor listing all property interests held by that owner. Existing law specifies that property leased under a conditional sales agreement to tax-exempt schools, colleges, libraries, and museums need not be included in the lessor's property statement.

Existing law does not specifically require that property leased under a conditional sales agreement, an agreement that allows the lessee the option to purchase the property for a nominal price at the end of the term of the lease, to be included in the lessor's property statement.

Proposed Law

This bill would amend Section 442 of the Revenue and Taxation Code to require the lessor of property that is leased under a conditional sales agreement to list that leased property on the lessor's property statement.

Comments

Purpose. According to the sponsor it is often unclear to both lessors and lessees who should report property subject to a conditional sales agreement for taxation purposes. It is possible that both parties report the property, potentially leading to double taxation if

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undiscovered, or that neither party reports the property, leading to an escape assessment that may later be discovered in an audit of either party. This bill would clarify which party is responsible for reporting the property for property tax assessment purposes.

Diesel Fuel Tax Refunds
Revenue and Taxation Code Section 60501

Current Law

Existing Diesel Fuel Tax Law Section 60501 provides that persons who have paid a tax for diesel fuel lost, sold, or removed, as provided, or used in a nontaxable use, other than on a farm for farming purposes or in an exempt bus operation, shall be reimbursed and repaid the amount of the tax. A claim for refund with respect to diesel fuel is allowed under Section 60501 only if specified conditions apply. Among other things, a claim for refund must contain specified information with respect to all of the diesel fuel covered by the claim and be supported by the original invoice showing the purchase. If no original invoice was created, electronic invoicing can be accepted as reflected by a computerized facsimile when accompanied by an original copy of the bill of lading or fuel manifest that can be directly tied to the electronic invoice.

Diesel Fuel Tax Law Section 60604 provides, in general, that every person dealing in, removing, transporting, or storing diesel fuel in this state must keep records, receipts, invoices, and other pertinent papers with respect to any claim for refund filed, as the Board may require.

The Board's Special Taxes Administration Regulation 4901, "Records," interprets and makes specific, in part, the provisions of Section 60604. Under the regulation a taxpayer may convert hardcopy documents received or produced in the normal course of business and required to be retained to storage-only imaging media such as microfilm or microfiche and discard the original hardcopy documents, subject to specified conditions, for purposes of storage and retention.

Proposed Law

This bill would amend Section 60501 of the Revenue and Taxation Code to authorize a diesel fuel tax claim for refund to be supported by an original invoice facsimile retained in an alternative storage media showing the purchase.

Comments

1. **Sponsor and purpose.** This provision is sponsored by Burlington Northern Railroad and is intended to codify the Board's regulation concerning the storage and retention of records and documents in an alternative storage media.
2. **This provision would not materially affect the Board's administration of the Diesel Fuel Tax Law.** Since this provision would basically codify the Board's interpretation of the law, it would not materially affect the Board's workload.

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COST ESTIMATE

The other provisions would not impact the Board's administrative costs. With respect to property taxes, the Board would incur some minor absorbable costs in informing and advising local county assessors, the public, and staff of the law changes.

REVENUE ESTIMATE

The provisions of Section 441 of this bill could result in increased revenues by allowing the assessor to determine the total consideration paid for a property which is currently escaping taxation due to misreporting.

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